UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RAFAEL JASSO,

Petitioner,

v.

ROBERT J. HERNANDEZ, Warden,

Respondent.

Civil No. 08-1137 LAB (PCL)

ORDER GRANTING APPLICATION TO PROCEED IN FORMA PAUPERIS AND DISMISSING PETITION AS DUPLICATIVE

Petitioner, a state prisoner proceeding pro se, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

REQUEST TO PROCEED IN FORMA PAUPERIS

According to his prison trust account statement, Petitioner has no funds on account at the California correctional institution in which he is presently confined. Petitioner cannot afford the $5.00 filing fee. Thus, the Court **GRANTS** Petitioner's application to proceed in forma pauperis,. The Clerk of the Court shall file the Petition for Writ of Habeas Corpus without prepayment of the filing fee.

PETITION IS DUPLICATIVE

The Court may dismiss a duplicative petition as frivolous if it "merely repeats pending or previously litigated claims." *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citations omitted). Here, Petitioner has filed two identical petitions with this Court. The Petition in this case was filed on June 2, 2008. An identical first amended petition was filed in case number 08cv0548 JAH (LSP) on June 2, 2008. In that case the Court has set a briefing schedule (*See* Order filed June 9, 2008, Case No. 08cv00548 JAH (LSP) [Doc. No. 6].)

CONCLUSION

Based on the foregoing, the Court **GRANTS** Petitioner's request to proceed in forma pauperis and **DISMISSES** this case because the Petition is duplicative of that filed in case number 08cv0548. The Clerk shall close the file.

IT IS SO ORDERED.

DATED: July 3, 2008

HONORABLE LARRY ALAN BURNS
United States District Judge